IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.7800 OF 2005

The Liquidator (K.E.Mangale)
Saswad Mali Sahakari Sakhar Karkhana Ltd. Petitioner
vs.
The Customs Excise & Service
Tax Appellate Tribunal & ors. Respondents

Dr.V.K.Chaudhari for the petitioner.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 24th March, 2006

P.C.

Heard Dr.V.K.Chaudhari, the learned counsel for the petitioner.

2. In the writ petition, the petitioner seeks to challenge the order passed by the Customs, Excise and Service Tax Appellate Tribunal (for short, 'the Tribunal') on 21st July, 2004, whereby the Tribunal dismissed the appeal for non-compliance of Section 35F of the Central Excise Act, 1944.

3. Section 35F reads thus:

> **35F. Deposit, pending appeal of duty demanded or penalty levied.-** Where in any appeal under this Chapter, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of central excise authorities or any penalty levied under this Act, the person

> desirous of appealing against such decision or order shall, pending the appeal, deposit with the adjudicating authority the duty demanded or the penalty levied:
>
> . Provided that where in any particular case, the Commissioner (Appeals) or the Appellate Tribunal is of opinion that the deposit of duty demanded or penalty levied would cause undue hardship to such person, the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal, may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue.
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> . Provided further that where an application is filed before the Commissioner (Appeals) for dispensing with the deposit of duty demanded or penalty levied under the first proviso, the Commissioner (Appeals) shall, where it is possible to do so, decide such application within thirty days from the date of its filing.

4. To maintain the appeal under Section 35F, pre-deposit of the duty demanded is a sine qua non unless the Tribunal by the specific order dispenses with such deposit on the ground of undue hardship or other justifiable reason.

5. There is nothing to show that the petitioner deposited with the Adjudicating Authority the duty demanded as required under Section 35F. Obviously, in the circumstances, the Tribunal cannot be said to have erred in dismissing the appeal for non-compliance.

6. It is pertinent to note that in the writ petition the petitioner has stated that the advocate for the

petitioner by his letter dated 28th March, 2003 sought to withdraw the appeal as in the view of the petitioner, the Assistant Commissioner, Solapur informed that the petitioner may be refunded whatever duty has been paid by it if the appeal was withdrawn. If that were so, the dismissal of the appeal by the Tribunal should not work prejudicial to the petitioner as the petitioner itself wanted to withdraw the appeal.

7. Be that as it may, no case for interference in the impugned is made out.

8. Writ petition is dismissed in limine.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)